

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Claims 1, 11-20, 34 and 36 are pending under consideration in the present application, of which claims 1, 11, 34 and 36 are independent.

With appreciation, it is noted that the Office Action indicates (see present Office Action, page 4, third paragraph) claims 12 and 14 as containing allowable subject matter.

Noted - Priority Document Received By USPTO

The indication (see Office Action Summary of the Office Action mailed October 9, 2008, boxes 12(a)(1) as checked) that the certified copies of the priority documents have been received by the USPTO is noted with appreciation.

Noted - IDS Considered

The indication (see attachment to the Office Action mailed November 26, 2007) that the Information Disclosure Statement as filed on March 30, 2004 and references listed therein have been considered is noted with appreciation.

Noted - Drawings Approved

The indication (see Office Action Summary of the Office Action mailed October 9, 2008, boxes 10(a) as checked) that the Drawings (submitted on March 30, 2004) have been approved is noted with appreciation.

Claim Objection

Claims 12, 15, 16 and 18 are objected to because the claims recite limitations which are vague and ambiguous. By the foregoing amendments, these claims have been amended to address the objection to the claims. Accordingly, withdrawal of the objection to the claims is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

Claims 1, 11, 13, 17, 20, 34 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hirst et al. (U.S. Patent No. 6,581,166, Hirst hereinafter) in view of Bare (U.S. Patent No. 6,577,600).

INDEPENDENT CLAIM 1

As an example, the Office Action acknowledges that a feature of claim 1, namely “preventing the processing unit from re-configuring a topology of a spanning tree” (underlining added for emphasis), distinguishes over Hirst. As will be explained below, at least that same feature of claim 1 also is a distinction over Bare, and thus over its combination with Hirst.

Bare merely describes the cost of the non-load balance port without any discussion of preventing the processing unit from re-configuring a topology of a spanning tree. In particular, column 82, lines 13-16 of Bare state:

It will then only need to increase the cost of the non-load balance port to be more expensive. This in turn will trigger a topology change notification with spanning tree.
(Underlining added for emphasis).

Triggering a topology change notification with spanning tree does not teach or suggest preventing the processing unit from re-configuring a topology of a spanning tree. Hence, the noted feature, namely “preventing the processing unit from re-configuring a topology of a spanning tree” is a distinction over Bare, and thus over its combination with Hirst.

Among other things, a prima facie case of obviousness must establish that the asserted combination of references teaches or suggests each and every element of the claimed invention. In view of the distinction of claim 1 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a prima facie case of obviousness vis-à-vis claim 1.

INDEPENDENT CLAIMS 11, 34 and 36

Independent claims 11, 34 and 36 recite a feature similar to the noted feature of claim 1, and so at least similarly distinguish over the asserted combination of references.

DEPENDENT CLAIMS

Claims 13, 17 and 20 ultimately depend from claim 11, respectively, and so at least similarly distinguish over the asserted combination of references.

In view of the foregoing discussion, the rejection of claims 1, 11, 13, 17, 20, 34 and 36 is improper. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 15, 16, 18 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hirst in view of Bare and Chin et al. (U.S. Patent No. 6,298,061, Chin hereinafter).

Claims 15, 16, 18 and 19 ultimately depend from independent claim 11, respectively. A basis for how Hirst and Bare are deficient vis-à-vis claim 11 has been discussed above. The Office Action does not rely upon Chin to compensate for these deficiencies. Hence, the noted feature of claim 11 also is a distinction over Chin.

Among other things, a prima facie case of obviousness must establish that the asserted combination of references teaches or suggests each and every element of the claimed invention. In view of the distinction of claim 11 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a prima facie case of obviousness vis-à-vis claim 11. Claims 15, 16, 18 and 19 ultimately depend from claim 11, respectively, and so at least similarly distinguish over the asserted combination of references.

In view of the foregoing discussion, the rejection of claims 15, 16, 18 and 19 is improper. Accordingly, withdrawal of the rejection is respectfully requested.

PATENT

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 50-1290.

Respectfully submitted,

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